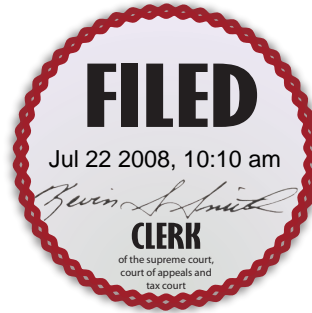


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

ROBERT C. WILLIAMS,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-0712-PC-1028

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia J. Gifford, Judge  
The Honorable Steven J. Rubick, Commissioner  
Cause No. 49G04-9308-CF-95901

**July 22, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Robert C. Williams appeals the denial of his petition for post-conviction relief (“PCR”), which challenged his convictions for class A felony conspiracy to commit murder, murder,<sup>1</sup> class C felony assisting a criminal, and with being a habitual offender. We affirm.

## **Issues**

Williams raises a number of freestanding claims, most of which are either waived or not appropriate for PCR arguments. He also contends he received ineffective assistance of counsel.

## **Facts**

Our supreme court previously described the facts of this case as follows:

After trial by jury, Williams stood convicted of murder, conspiracy to commit murder, and assisting a criminal, a class C felony. The jury also found that he was a habitual offender. The trial court sentenced him to forty years for murder and added twenty years for aggravating circumstances. This sentence was further enhanced by thirty years for the habitual offender finding. The court ordered a concurrent four-year term for assisting a criminal.

The evidence at trial showed that Anthony Gaddis was assisting the police in investigating a suspected drug dealer named Kevin Vaden. Based on Gaddis’s purchase of illegal drugs from Vaden, the state charged him with two drug-related offenses. In response, Vaden arranged with Williams and his step-brother to kill Gaddis and paid them with drugs and money. They did not follow through, but agreed to assist Vaden in committing the crime himself.

The day before Vaden’s trial, he and Williams hid in an apartment parking lot, awaiting Gaddis’ return. Williams chose an advantageous spot to lie in wait and observe Gaddis’ arrival. As Gaddis exited his car, Vaden stepped forward and shot him several times in the head. Vaden and

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<sup>1</sup> Upon conviction the trial court merged the conviction for conspiracy to commit murder into murder.

Williams escaped the scene together, Williams working to calm Vaden, whom he later described as “frantic.” Vaden gave Williams the weapon, and Williams disposed of it by throwing it down a sewer.

Williams v. State, 669 N.E.2d 956, 957 (Ind. 1996) (citations omitted).

On direct appeal Williams challenged his convictions and sentences, asserting the trial court erroneously admitted tapes of conversations he had with a police informant who died before his trial. Id. Williams further asserted that without the tapes there would be insufficient evidence to support his convictions. Id. Finally, Williams argued that his sentence was excessive and manifestly unreasonable. Id. Our supreme court affirmed the trial court on all of Williams’ challenges.

Williams then filed a PCR petition; it was dismissed without prejudice in 2005. Williams filed a subsequent petition in 2006, arguing several freestanding claims<sup>2</sup> and ineffective assistance of counsel allegations with both trial and appellate counsel. The PCR court heard the matters on three separate occasions.

On September 20, 2006, the court attempted to help Williams address each of the allegations asserted in his PCR petition, but Williams wished to proceed in a manner that was not consistent with the rules of evidence nor allowed at PCR hearings. The court

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<sup>2</sup> Among Williams’ allegations in the transcript were: (1) claims his due process rights had been violated because “he was forbidden to take the stand in his own behalf,” which amounted to fundamental error; (2) his right to a speedy trial had been violated because his trial was heard after the 70-day limit; (3) his due process rights were violated when his probable cause affidavit did not comply with Indiana Code § 35-33-5-2; (4) his due process rights were violated when “probable cause was not found by a neutral and detached magistrate;” (5) ineffective assistance of counsel; (6) his due process rights were violated because inadmissible hearsay testimony was admitted at trial; (7) his due process rights were violated when he and trial counsel were not informed of a note sent to the jury during deliberations in accordance with Indiana Code § 34-1-21; (8) his due process rights were violated when a special judge was not placed to deliberate over the cause; (9) prosecutorial misconduct, and (10) several other non-cogent arguments.

noted that Williams was uncooperative and that Williams implied the hearing was unfair. The court continued the hearing until January in an effort to allow Williams to familiarize himself with the rules of evidence. On January 10, 2007, Williams again attempted to bring up several claims that were not appropriate for a PCR hearing. After Williams made several arguments that were not appropriate for PCR review, the court continued the hearing again until September. On September 5, 2007, the court heard the matter in full.

After reviewing the record and considering the evidence, the PCR court concluded that the freestanding issues Williams raised in his PCR petition were known and available at the time of direct appeal, and because of that, relief could no longer be granted on those issues. The PCR court further stated there were no valid claims of ineffective assistance of counsel. Williams now appeals.

## **Analysis**

### ***I. Free-Standing Arguments***

PCR review provides a means for prisoners to be heard on matters that were unavailable at trial or on direct appeal. There are several limits, however, to this type of review. PCR rules create narrow remedies for subsequent collateral challenges to convictions. Martin v. State, 760 N.E. 2d 597, 599 (Ind. 2002). If an issue is known or available at the time of direct appeal and it is not raised, it is waived for post-conviction review. See Reed v. State, 856 N.E. 2d 1189, 1193 (Ind. 2006).

Issues that were raised on direct appeal may not be re-litigated subsequently in PCR proceedings. Id. at 1194. PCR proceedings are not a “super appeal.” Kien v. State,

866 N.E.2d 377 at 380-81 (Ind. Ct. App. 2007), trans. denied. Additionally, claims of fundamental error are no longer appropriate for a PCR proceeding. Sanders v. State, 765 N.E.2d 591, 592 (Ind. 2002).

“A petitioner who appeals the denial of post conviction relief faces a rigorous standard of review, as the reviewing court may consider only the evidence and the reasonable inferences supporting the judgment of the post conviction court.” Kien, 866 N.E.2d, at 380-81. If a PCR petitioner was denied PCR relief, he or she must show that the evidence as a whole leads unerringly and unmistakably to an opposite conclusion than was reached by the PCR court. Ivy v. State, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007), trans. denied. The petitioner has the burden of establishing grounds for relief by a preponderance of the evidence. Ind. PCR Rule 1(5); Ivy, 861 N.E.2d at 1244. The appellate court must accept the PCR court’s findings of fact and may only reverse if the findings are clearly erroneous. Bahm v. State, 789 N.E.2d 50, 57 (Ind. Ct. App. 2003).

The PCR court found that the freestanding claims Williams makes are not appropriate for PCR review, as they were available on direct appeal. We agree. Furthermore, some of William’s claims were raised on direct appeal, and those claims are res judicata.

## ***II. Ineffective Assistance of Counsel***

Williams does bring a separate claim of ineffective assistance of counsel. Ineffective assistance of counsel is a claim appropriate for PCR review. See Overstreet v. State, 877 N.E.2d 144, 150 (Ind. Ct. App. 2007). However, a party waives an issue

raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. Smith v. State, 822 N.E.2d 193, 202-3 (Ind. Ct. App. 2005), trans. denied. ; see also Ind. Appellate Rule 46(A)(8)(a). We find Williams' arguments to be waived for lack of cogency.

We recognize Williams' frustration, which is apparent from the review of the transcript. It is clear from the record he did not understand the rules of evidence.<sup>3</sup> Pro se litigants, however, are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004) trans. denied. Williams cannot take sanctuary in his amateur status.

To the extent that we have been able to discern some of William's arguments, he has a very heavy burden to overcome in substantiating his claims of ineffective assistance of counsel. There is a strong presumption that counsel exercised effective assistance. Grinstead v. State, 845 N.E.2d 1027, 1036 (Ind. 2006). Isolated poor strategy, bad tactics, a mistake, carelessness, or inexperience does not necessarily amount to a legal claim of ineffective assistance of counsel; the situation is to be reviewed as a whole. Id. To establish ineffective assistance of counsel, a defendant must show: (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that but for counsel's ineffective performance, the result would

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<sup>3</sup> Williams did not understand why some items were allowed into evidence and others were not. He also did not understand why certain exhibits were objected to, and what "sustained" or "overruled" meant. He was very confused as to why some objections were sustained, and others were overruled. The PCR court was more than reasonable by allowing three separate hearings on the matter and allowing Williams ample time to review the rules of evidence.

have been different. Lambert v. State 743 N.E.2d 719, 730 (Ind. 2001), cert. denied, 534 U.S. 1136, 122 S. Ct. 1082 (2002). A petitioner must satisfy both prongs in order to succeed on the claim. See id. The standard of review for a claim of ineffective assistance of appellate counsel is the same as for trial counsel. Allen v. State, 749 N.E.2d 1158, 1166 (Ind. 2001), cert. denied, 535 U.S. 1061, 122 S. Ct. 1925 (2002).

One of Williams' arguments is that his attorney prevented him from testifying, and that was a violation of his right to due process; therefore, his attorney was ineffective. We disagree. Even if that conduct were to fall below an objective standard of reasonableness, Williams has done nothing to demonstrate that the outcome of the trial or direct appeal would have been different. In fact, the record indicates trial counsel strongly believed it would be harmful if Williams testified. We find trial counsel's actions qualify as a reasonable strategic decision.

The State argues that Williams offered no evidence to substantiate his claims, and he did not introduce the trial record into evidence. Williams asserted he needed the transcript to verify his claims. Even if we were to consider Williams' claims without verification, upon review of the record we are not convinced that ineffective assistance of counsel occurred either at the trial or the appellate level. Williams does not meet his burden in showing that his counsel's performance fell below an objective standard, or that he was prejudiced by the performance. Simply put, Williams fails to present any cogent reason why his trial or direct appeal would have reached a more favorable result if counsel had acted differently. We agree with the PCR court that Williams' attorneys were effective.

## **Conclusion**

Williams' claims are either waived or not appropriate for a PCR proceeding. Even if his claims of ineffective assistance of counsel were cogent, he still has not convinced us that counsel's performance fell below an objective standard of reasonableness, or that he was prejudiced by the performance. We affirm the denial of PCR relief.

Affirmed.

CRONE, J., and BRADFORD, J., concur.